

Appl. No. 10/706,104
Docket No. 9118M
Amdt. dated January 9, 2008 (draft)
Reply to Office Action mailed on September 9, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 18-29, 31, 32 and 34 are pending in the present application. No additional claims fee is believed to be due.

Claims 18, 22, 23, 28, 32, and 34 have been amended.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Objections

The Office Action objects to claims 18, 28, 32, and 34 for having more than one period in a claim. Accordingly, Applicants have amended claims 18, 28, 32, and 34 so that each claim has only one period. Applicants respectfully request that the objections be withdrawn.

Rejection Under 35 USC §112, First Paragraph

The Office Action rejects claims 18-29, 31-32, and 34 under 35 USC 112, first paragraph, for failing to comply with the written description requirement. Specifically, the Office Action states that because the claimed genus is so highly variant, the description provided is insufficient, and that the disclosure fails to provide a representative number of species to describe the genus claimed.

Applicants assert that a retentive agent is clearly defined in the specification on the end of page 5 and beginning of page 6. Applicants have provided a meaning for the term retentive agent through descriptions and examples in the specification. Also, the retentive agent is limited to a Markush group. Furthermore, in claims 22 and 23, the retentive agent is limited to three or four specific compositions. Therefore, Applicants respectfully request that the rejection be withdrawn.

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Rejection Under 35 USC §103(a) Over Lawlor in view of La Rochelle and Aberg

Claims 18-29, 31-32, and 34 have been rejected under 35 USC §103(a) as being unpatentable over Lawlor (US 6,706,256) in view of La Rochelle (US 4,157,386) taken with Aberg (WO 88/10110). This rejection is traversed because Lawlor in view of La Rochelle and Aberg does not establish a *prima facie* case of obviousness because there is no motivation to combine the cited references, and even if combined, the references do not teach or suggest all of the claim limitations in the rejected claims.

First, Applicants contend that the Office Action fails to point to disclosure in any of the cited references that teaches or suggests combining the references to create the present invention as specified in claims 18-29, 31-32, and 34. "The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. . . It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references."¹ "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability . . . the essence of hindsight."²

As specified in amended claim 18, the present invention provides an oral care dental care composition comprising a retentive agent, wherein the composition forms an intact hydrated mass that is visible on 2 to 7 molar or premolar surfaces for 5 minutes to 60 minutes after a person chews two tablets and brushes his or her teeth. Even though there is some overlap of ingredients used within the same levels, the Office Action fails to point to disclosure in any of the references that teaches or suggests combining the references to create a composition wherein the composition forms an intact hydrated mass that is visible on 2 to 7 molar or premolar surfaces for 5 minutes to 60 minutes after a person chews two tablets and brushes his or her teeth.

¹ *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596 (Fed. Cir. 1988).

² *In re Dembicak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985).

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Applicants assert that this combination of references is improper and requires improper hindsight reconstruction. The Office Action has combined three references to achieve the claimed invention. Lawlor discloses an oral care composition containing an effective amount of an antibacterial seed or pulp extract from the Citrus or Vitis plan family. The oral care compositions are formulated for use in the oral cavity and intended to treat or prevent oral malodour. La Rochelle discloses a soft lozenge that, upon chewing, interacts with saliva to coat the teeth with a sticky mass removable only by brushing with a toothbrush. The object of the invention is to motivate children to brush their teeth. La Rochelle emphasizes that in its invention, the adhesive paste sticks to the teeth and cannot be removed by rinsing, but is removed only by brushing. This is clearly different from the present invention that remains visible on the teeth even after rinsing and brushing. And Aberg discloses a tooth cleaning and fluoridating tablet that is chewed and swished around the mouth for about 1 to 2 minutes (preferably at least 2 minutes) and then swallowed. There is no suggestion or teaching that the Aberg composition remains visible on the teeth after swallowing. The references include a variety of different applications and a variety of different compositions. But no reference discloses a motivation to combine these references to arrive at the claimed invention. And even if combined, the references do not teach or suggest all of the claim limitations in the rejected claims. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Furthermore, the attached declaration and data demonstrate that Lawlor and other similar samples do not perform the same as the present invention in the subject's mouth and do not offer the same benefits. The present invention forms an aesthetically pleasing viscous slurry that is deposited and retained in the pits, fissures, and occlusal surfaces of the subject's teeth for at least 5 minutes. As can be seen from the attached declaration and data submitted under 37 CFR § 1.132, a sample of Lawlor's example 8 did not remain visible and was not retained or deposited in any subject's tooth 5 minutes after being chewed. (See Figs. 1 and 2). Similarly, samples of Eclipse chewing gum and a BreathSavers mint also failed to deposit or be retained in any subject's tooth 5 minutes after chewing. (See Figs. 1 and 2).

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In comparison, the submitted data and photographs of Figs. 1 and 2 show that when a sample of the claimed retentive agents used at the claimed levels (sample "Bullseye" comprising a retentive agent of about 7% hydroxyethyl cellulose and about 4% carboxymethyl cellulose) the composition was deposited and retained in multiple sites 5 minutes and longer after chewing. (See Figs. 1 and 2.)

It stands to reason that compositions displaying different properties can not be identical. Therefore, the submitted data shows that the present invention can not be a combination of Lawlor and the other references, because the present invention demonstrates properties that Lawlor and other similar samples do not have.

Accordingly, Applicants contend that the claims are in condition for allowance.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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